

Rajendran's evidence on this aspect was that after the accused said, 'I will kuttu you', and Neelamegam replied, 'Can you kuttu me?' or words to that effect, he turned to look at the two of them. He saw the accused move one step backwards and take a knife from the rack. The accused then moved one step forward and caught hold of Neelamegam's forehead with his left arm and stabbed Neelamegam at the shoulder region close to the neck. When Rajendran was asked if, before the accused took the knife, Neelamegam moved towards the accused, he answered 'no' and said that the deceased was standing still. When defence counsel confronted him with his statement to the police, which was tendered at the preliminary inquiry, where he stated:

Both of them moved towards each other as they argued. As the deceased drew closer, I saw Ramasamy retreating back and he then grabbed hold of a knife from the knife rack ...

Rajendran said that he did not see Neelamegam go close to the accused; Neelamegam remained where he was. When pressed further, Rajendran agreed that it was possible that before he turned to look at them, Neelamegam had moved closed to the accused.

As the statement to the police tendered at the preliminary inquiry was given soon after the incident, it stands no reason that what he stated therein is more likely to be accurate than what he now tells the court some two years later.

This leaves us with two points where the evidence of the accused is at variance with that of the prosecution — first, the accused said he was facing the wall when he felt someone grabbing him from behind whereas Rajendran denied that Neelamegam grabbed the accused from behind; second, the accused said he took the knife from a plate on the upper rack whereas Rajendran said the accused took the knife from the knife rack. While these are important points, we do not think they are critical for determining whether exception 4 applies. It seems to us quite clear that immediately prior to the stabbing the quarrel had reached an explosive stage where one party talked about 'kuttu' and the other dared the former to do so. Both Muniandy and Rajendran told the court that Neelamegam was much bigger than the accused and in a free fight the accused would lose. In all probability, Neelamegam did rush forward and grabbed the accused who turned round and used the knife as a weapon to 'kuttu' the deceased. Both of them were engaged in a fight.

In all the circumstances we find that this is a case where exception 4 applies. We do not think, bearing in mind that Neelamegam was challenging the accused to 'kuttu' him and engaging in a fight with the accused, that it could be said that the accused had taken any undue advantage or acted in a cruel or unusual manner.

A In the context, we find that the accused used the word 'kuttu' to mean 'stab'. It could not have meant 'poke' or 'punch' because it was obvious that the accused was no match for the deceased if he was going to use only his bare hands.

B This is an unfortunate incident. The two of them, who were obviously fellow workers, and who shared a cubicle with two others, allowed their passion to have the better of them. To our mind, this was due in no small part to the liquor they had consumed. A tiny misunderstanding was blown out of all proportions. The two had quarrelled before but their previous quarrels had apparently never reached the nasty stage like the present instance where physical violence was resorted to.

Accordingly, we find the accused guilty of the offence of culpable homicide not amounting to murder.

Order accordingly.

D Solicitors: *Shyam & Chew*.

Reported by S Surenthiraraj

E Lee Kuan Yew v Jeyaretnam JB

HIGH COURT (SINGAPORE) — MOTION IN SUIT NO 1754
OF 1988
YONG PUNG HOW J
17 AUGUST 1990

F *Civil Procedure — Stay of execution — Strong grounds for appeal — Whether ground for granting stay of execution — Special circumstances*

G The defendant had been ordered to pay the plaintiff a large sum of damages for slander. The plaintiff had demanded payment of the sum and refused to agree to a stay of execution. The defendant applied to court for a stay of execution on the grounds that he had strong grounds for his appeal against the original decision.

Held, dismissing the defendant's application:

(1) An appeal does not of itself operate as a stay of execution. The court has power to grant a stay at its discretion, which had to be exercised in accordance with established principles.

H (2) Judgment against the defendant was given after a full trial. The court should not deprive a successful plaintiff of the fruits of his victory pending an appeal unless there were special circumstances to justify the granting of a stay.

[Editorial Note: The defendant has appealed to the Court of Appeal vide Civil Appeal No 65 of 1990.]

I Cases referred to

- 1 *Serangoon Garden Estate Ltd v Ang Keng* [1953] MLJ 116 (refd)
- 2 *Syarikat Berpakat v Lim Kai Kok* [1983] 1 MLJ 406 (refd)

- 3 *Dickson Trading (S) Pte Ltd v Transmarco Ltd* [1989] 2 MLJ 408 (refd)
- 4 *Hong Leong Finance Bhd v Hon Hoi Weng & Ors* [1987] 2 MLJ 377 (fold)
- 5 *Wilson v Church (No 2)* (1879) 12 Ch D 454 (refd)
- 6 *Baker v Lavery* (1885) 14 QBD 769 (refd)
- 7 *Atkins v Great Western Railway Co* (1886) 2 TLR 400 (refd)

Legislation referred to

Rules of the Supreme Court 1970 O 57 r 15(1)

Tan Kok Quan for the plaintiff.
Defendant in person.

Cur Adv Vult

Yong Pung How J: By notice of motion which came up for hearing on 17 August 1990 the defendant in this suit applied for an order that all further proceedings and steps to execute a judgment given against him on 3 August 1990 be stayed until the determination of his appeal.

In his supporting affidavit, the defendant referred to the judgment of the High Court on 3 August 1990 by which he was ordered to pay \$260,000 in damages for his slander of the plaintiff, together with interest at the rate of 6% pa from 1 September 1988 until judgment. [See [1990] 3 MLJ 322.] He said that he believed and had been advised that there were substantial merits in his appeal, and he listed a number of grounds which he will repeat in his petition of appeal. He contended that these would constitute the special circumstances required by the court's decision in *Serangoon Garden Estate Ltd v Ang Keng*.¹ The successful plaintiff had on previous occasions announced an intention to donate whatever damages he might be awarded to charity, and, although the defendant was not aware that there had been a similar announcement on this occasion, he said that it was clear that the plaintiff was not in any need personally of the award. The plaintiff therefore could wait for the fruits of his victory, and would not suffer any prejudice if payment of the damages and interest was withheld until after the hearing of the appeal.

The plaintiff, however, the defendant went on to say in his affidavit, had demanded payment of the award by 4pm on 13 August 1990 and had refused to agree to a stay of execution. The defendant did not have the money readily available to pay the plaintiff as demanded, and he needed some time to raise the money. He had lodged his notice of appeal and he undertook to prosecute the appeal with all haste on his part once the record was supplied to him. He would also ask the court to direct that the appeal be put before the Court of Appeal as early as possible. In amplification of the averments in his affidavit, he submitted at the hearing of his motion that he was prepared to pay something or furnish some

A acceptable security within three or four weeks, as a condition for a stay. Counsel also cited *Syarikat Berpakat v Lim Kai Kok*² and *Dickson Trading (S) Pte Ltd v Transmarco Ltd*.³

B One aspect of the law regarding such applications is clear: an appeal of itself does not operate as a stay of execution. Section 41 of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) provides that:

An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from unless the court below or the Court of Appeal so orders and no intermediate act or proceeding shall be invalidated except so far as the Court of Appeal may direct.

C Order 57 r 15(1) of the Rules of the Supreme Court 1970, which is in pari materia with O 59 r 13 of *The Supreme Court Practice 1988*, provides that:

Except so far as the court below or the Court of Appeal may otherwise direct —

- (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;
- (b) no intermediate act or proceeding shall be invalidated by an appeal.

The court has power to grant a stay, and this is entirely in the discretion of the court, but the discretion must be exercised in accordance with established principles. In the present case, the judgment was not a summary judgment or a judgment in default, but was a judgment which was given after a full trial, in which the court even had the benefit of submissions by eminent Queen's Counsel on both sides. In such cases in which an unsuccessful defendant has had a full opportunity to present his case, the court should not deprive a successful plaintiff of the fruits of his victory pending an appeal, unless the unsuccessful defendant can show some special circumstances to justify the granting of a stay: *Hong Leong Finance Bhd v Hon Hoi Weng & Ors*.⁴ An example of such special circumstances would be a situation in which it can be shown by affidavit that, unless a stay is granted, a successful appeal could be nugatory. There might be the likelihood of the judgment creditor becoming insolvent before the disposal of the appeal, or the circumstances might be such that, if the judgment debt and costs are paid, there is no reasonable probability of getting them back if the appeal succeeds. Thus, in *Wilson v Church (No 2)*⁵ a bond holder on behalf of himself and other bond holders claimed against a railway company that money advanced by them to the company should be returned, instead of its being applied in the undertaking. Judgment was given for the bond holder with costs, and it was ordered that the money should be forthwith distributed among the bond holders. The bonds were payable to bearer, the bond holders were very numerous and many were residing abroad. The defendant company appealed and moved to stay proceedings pending the appeal. It was held that there were

sufficient grounds to induce the court to stay the distribution of the fund pending the appeal. See also *Barker v Lavery*⁶ followed in *Atkins v Great Western Railway Co.*⁷ In the present case, the defendant set out in his affidavit a number of grounds of appeal which he contended had substantial merits. However, the fact that there may be strong grounds for an appeal is not by itself a reason for granting a stay. In *Atkins v Great Western Railway Co.*,⁷ Lord Esher MR said in refusing a stay:

... that there were strong grounds for an appeal was no reason, for no one ought to appeal without strong grounds for doing so.

For the above reasons, the application for a stay was dismissed with costs.

Application dismissed.

Solicitors: *Lee & Lee; JB Jeyaretnam & Co.*

Reported by Terence Tan Bian Chye

Kintyre Park Development Pte Ltd v Cooma Lau & Loh

HIGH COURT (SINGAPORE) — PETITION OF COURSE NO 1
OF 1990
CHAN SEK KEONG J
3 AUGUST 1990

Legal Profession — Bill of costs — Taxation — Mortgagee's solicitor and client costs — Payment under protest by one borrower before taxation — Whether taxation allowed — Whether borrower liable for full amount — Legal Profession Act (Cap 161, 1985 Ed), ss 117(1) & 119

Words and Phrases — 'Bill' — Legal Profession Act (Cap 161, 1985 Ed), s 117(1)

The petitioner, as one of the two owners of a property mortgaged to the mortgagee bank, paid to the respondent as the mortgagee's solicitors, all the legal costs and expenses of an action by the mortgagee against the petitioner to recover outstanding sums under the mortgages and the costs of a winding-up action. Payment was made 'strictly without admission of liability and on a without prejudice basis and paid under protest' with a provision for taxation of the respondent's bill of costs.

The petitioner filed a petition to tax the respondent's bill pursuant to s 117(1) of the Legal Profession Act (Cap 161, 1985 Ed) and to recover any sums paid in excess of taxed costs. The respondent objected to the petition on two grounds, that GB, the other owner of two-thirds share of the property, was not a party to the proceedings, and that the bill may not be taxed as it had been paid and there were no special circumstances shown by the petitioner as required under the Act.

Held, granting the petition:

(1) The question before the court was who was liable to pay the bill of the party chargeable therewith. The party

chargeable was the mortgagee, the respondent's client. The petitioner was jointly liable with GB and each of them severally liable for the mortgagee's bill. The petitioner, being joint debtor, was liable for the whole of the bill and not merely one-third.

(2) There was no inflexible rule of law that all parties chargeable under a bill of costs must be made parties to a taxation.

(3) The payment by the petitioner was not made with a view to settling it finally but with a view to effecting prompt redemption of the petitioner's property. The payment was therefore not a payment for the purpose of s 119(1) of the Act and the petitioner therefore need not show any special circumstance required under the Act before taxation was permitted by the court. Alternatively, the petitioner's express reservation to tax is per se a special circumstance within s 119(1) of the Act.

[Editorial Note: The respondent has appealed to the Court of Appeal vide Civil Appeal No 74 of 1990.]

Cases referred to

- 1 *Re Perkins* 50 ER 95 (distd)
- 2 *Re Lewin* 51 ER 915 (distd)
- 3 *Re Ilderton* 55 ER 344 (distd)
- 4 *Re Stephen* 41 ER 1060 (folld)
- 5 *Re Williams* (1891) 65 LT 68 (folld)
- 6 *Re Leggatt & Carruthers* (1908) 53 Sol J 84 (folld)
- 7 *Sanders v Isaacs* [1971] 1 All ER 755 (refd)
- 8 *Re Baker* (1863) 32 Beav 526; 55 ER 207 (folld)

Legislation referred to

Legal Profession Act (Cap 161, 1985 Ed) s 117(1)

Laurence John Wee Ewe Lay for the petitioner.
David Hew Sin Teck for the respondent.

Cur Adv Vult

Chan Sek Keong J: The petitioner and another company, viz Golden Bow Holdings (Pte) Ltd ('Golden Bow'), were proprietors as tenants in common holding respectively a one-third share and a two-third share in a property which was mortgaged and further mortgaged to the respondent's clients, viz Societe Generale Pour Favoriser Le Developpment Du Commerce Et De L'Industrie En France ('the bank'), a French bank carrying on business in Singapore, to secure banking facilities to each or both of them up to the limit of \$24,625,000 plus \$3,375,000. By the terms of the said mortgages, the petitioner and Golden Bow are jointly (or jointly and severally) liable to repay any outstandings to the bank and also the costs of enforcing the securities.

The mortgagee bank commenced winding-up proceedings against the petitioner and Golden Bow in connection with outstandings under the said mortgages. It was not a complicated matter as the main issue was the validity of the statutory notice of demand on which the winding-up petition was founded. The respondent, a firm of advocates and solicitors, acted for the bank in the said proceedings and, in connection therewith,